Supreme Court, U.S.
FILED
MAY 6 1999
CLERK

No. 98-1615

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

MOTOWN BEVERAGE COMPANY OF OHIO, et al.,

Petitioners,

—v.—

MOTOWN RECORD COMPANY L.P.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

Milton Springut
Counsel of Record
KALOW SPRINGUT & BRESSLER
488 Madison Avenue
New York, New York 10022
(212) 813-1600

Attorneys for Respondent

IDP

Counter Statement of Question Presented

Since the Petition of Motown Beverage Company of Ohio, Arthur B. Boyd, Jr. and Cleveland Brown (collectively "Motown Beverage") mischaracterizes the nature of the proceedings below, Respondent Motown Record Company L.P. ("Motown") respectfully restates the question presented as follows:

Whether the Petition should be granted, where (i) there is no split in the Circuits with respect to the Federal Rules of Civil Procedure at issue, (ii) no novel or important questions of law are presented, and (iii) the Petition is no more than a third attempt to challenge the district court's findings, which were amply supported by the record.

Supplemental Statement of the Parties

Pursuant to Rule 29(6), Respondent Motown certifies that it is not a corporation and thus no disclosure is necessary under the Rule.

TABLE OF CONTENTS

PAGE

Table of Authorities iv

Summary of Argument 1

Counter-Statement of the Case 2

A. Proceedings in the Trial Court 2

B. The Appellate Court Decision 2

Reasons for Denying the Writ 3

THE APPELLATE COURT'S DECISION WAS AN UNEXCEPTIONAL INTERPRETATION OF THE FEDERAL RULES OF INSUFFICIENT IMPORTANCE TO GRANT REVIEW OF ITS DECISION 3

A. National Hockey League 3

B. Circuit Court Decisions Relied Upon 5

Conclusion 6

TABLE OF AUTHORITIES

Cases PAGE

Graver Mfg. Co. v. Linde Air Products Co., 336 U.S. 271 (1949) 3

National Hockey League v. Metropolitan Hockey Club Inc., 427 U.S. 639 (1976) 3-5

United States v. Johnson, 268 U.S. 220 (1925) 3

Rules

Fed. R. Civ. P. 16 ..... 2, 3

Fed. R. Civ. P. 37 ..... 2, 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

No. 98-1615

MOTOWN BEVERAGE COMPANY OF OHIO, et al.,

Petitioners,

—v.—

MOTOWN RECORD COMPANY L.P.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

Summary of Argument

The Petition does not even attempt to explain why this case is worthy of this Court's review. Rather, virtually the entire brief is a reargument of the evidence below. The Petitioners simply disagree with the trial court's and Second Circuit's decisions, and want to reargue their case yet again. This Court has stated that such cases are particularly inappropriate for review.

Counter-Statement of the Case

A. Proceedings in the Trial Court

The Petition is almost entirely devoted to a recitation of 'facts,' or more precisely, allegedly 'correct' inferences that the trial court should have drawn from the record. Respondent instead submits that the opinion of the trial court below contains an accurate and adequate statement of the relevant proceedings before it, and therefore adopts its decision. (Appendix F to the Petition).

As set out in the trial court's decision, from the outset of this case the Petitioners engaged in prolonged and systematic discovery abuses and violations of court orders, and received repeated warnings that a default might be entered if they did not comply with the Federal Rules and the court's orders. Petitioners did not comply, and the trial court, correctly exercising its discretion and correctly applying the law, struck Petitioners' Answer and granted a default judgment.

B. The Appellate Court Decision

The Second Circuit's decision was as straightforward as it was correct. The Second Circuit found no abuse of discretion in the trial court's findings. To the contrary, the appellate court found them "well documented" by the record, and agreed with the district court that the repeated pattern of Motown Beverage's discovery abuses and flouting of orders supported the trial court's striking of their Answer and the entry of a default judgment under Fed. R. Civ. P. 16(f) & 37(b). (Appendix I to the Petition)

Reasons for Denying the Writ

THE APPELLATE COURT'S DECISION WAS AN UNEXCEPTIONAL INTERPRETATION OF THE FEDERAL RULES OF INSUFFICIENT IMPORTANCE TO GRANT REVIEW OF ITS DECISION

The Petition does not demonstrate any inconsistency in the Second Circuit's decision and the precedents of this Court; it does not identify any split among the Circuits supporting this Court's need to set down 'uniform' standards for the application of Fed. R. Civ. P. 16(f) or Fed. R. Civ. P. 37; and aside from an unfounded and offensive statement that this Court should restore the "credibility and trust" of the Southern District of New York and the Second Circuit, "which has been severely tarnished in the eyes of the Afro-American community," (Petition, at 14), the case itself raises no special or important issues of law.

The opposite is true—this case falls squarely within that category of cases that this Court has singled out as inappropriate for its review: "We do not grant certiorari to review evidence and discuss specific facts." *United States v. Johnson*, 268 U.S. 220, 227 (1925). *Accord Graver Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271, 275 (1949) (collecting cases): "[A] court of law, such as this Court is, rather than a court for the correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional error."

A. National Hockey League

Petitioners first argue that the Second Circuit misapplied this Court's decision of *National Hockey League v. Metropolitan Hockey Club Inc.*, 427 U.S. 639 (1976) because of an absence of a finding of "willful, bad faith or other such culpable misconduct by the litigant." (Petition, at 6).

The findings of the trial court, amply based on the record and adopted on appeal, do evince precisely such willful conduct, and satisfy the standards of *National Hockey League*. The trial court found a consistent pattern of discovery abuses and violations of court orders, and specifically held that a sanction other than dismissal, in light of the egregiousness of Petitioners' conduct, "would not be effective." (Appendix F to Petition (trial court opinion), at 51-59 & 58 ¶ 30)

The Second Circuit found the trial court's Findings of Fact and Conclusions of Law "well documented," and flatly rejected Motown Beverage's argument that the lower court had abused its discretion in entering the default. (Appendix I to Petition (appellate court opinion), at 72-74)

What Petitioners fail to acknowledge is a separate aspect of the *National Hockey League* decision:

> There is a natural tendency on the part of reviewing courts, properly employing the benefit of hindsight, to be heavily influenced by the severity of outright dismissal as a sanction for failure to comply with a discovery order. It is quite reasonable to conclude that a party who has been subjected to such an order will feel duly chastened, so that even though he succeeds in having the order reversed on appeal he will nonetheless comply promptly with future discovery orders of the district court.
>
> But here, as in other areas of the law, the most severe spectrum of sanctions provided by statute or rule must be available to the district court in appropriate cases, not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent. If the decision of the Court of Appeals [which had vacated the default] remained undisturbed in this case, it might well be that these [defendants] would faithfully comply with all future discovery orders in this

> case. But other parties to other lawsuits would feel freer than we think Rule 37 contemplates they should feel to flout discovery orders of other district courts.

427 U.S. at 642-43.

B. Circuit Court Decisions Relied Upon

The Petitioners—while not even remotely demonstrating a split in the circuits—also cite to certain decisions of the Second Circuit *itself* (*see* Petition, at 6), and decisions from other Circuits (*id.* at 12-13), and then argue that the decision below did not 'follow' these decisions.

In the first instance, it is a fiction to posit that another appellate court would reach a different decision on these facts. Each determination is highly fact-specific, and Rule 37 grants a trial court broad discretion in deciding upon the appropriate remedy.

Equally fundamentally, Petitioners' arguments based on these cases are simply a rehashing of Petitioners' disagreements with the trial court's findings of fact and conclusions of law, upheld on appeal. The cases cited do not demonstrate any kind of 'conflict' among Circuits, or espouse any principles inconsistent with the approach taken by the Second Circuit.[1]

After repeated, consistent violations of the Federal Rules and court orders, and the consequent entry of default, the Petitioners appealed to the Second Circuit, effectively seeking a *de novo* review of the facts. They are seeking the same opportunity before this Court. This is not an appro-

---

[1] The Petition also at times mischaracterizes the decisions below. In citing to other decisions, Petitioners argue that, unlike those cases, there was no court 'order' here that they violated, and the trial court failed to consider lesser sanctions. But this is precisely what the trial court did here: it issued orders, and considered lesser sanctions. *See, e.g.*, trial court decision at ¶¶ 11, 15, 24, 30.

priate request for appellate review, but rather a further example of Petitioners' misuse of process and waste of judicial resources.

Conclusion

For the reasons stated, Respondent respectfully requests that the Petition for a Writ of Certiorari be denied.

Respectfully submitted,

Milton Springut
Counsel of Record
KALOW SPRINGUT & BRESSLER
488 Madison Avenue
New York, New York 10022
(212) 813-1600

Of Counsel

Kenneth L. Bressler
Robert Tilewick
KALOW SPRINGUT & BRESSLER
488 Madison Avenue
New York, New York 10022
(212) 813-1600